



February 2, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554

Re: IB Docket No. 11-149, New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority; IB Docket No. 11-150, DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held by New DBSD Satellite Services G.P., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession

Dear Ms. Dortch:

In its recent ex parte submission, AT&T Services, Inc. ("AT&T") acknowledges a fundamental point about DISH Network Corporation's ("DISH") request in these dockets: "that the repurposing of [the relevant S-Band] spectrum for mobile broadband use will yield significant public interest benefits." AT&T's acknowledgment joins other, even more explicit, voices in these proceedings touting the wide-ranging public benefits warranting prompt approval of the above-captioned applications. For example, the Computer & Communications Industry Association ("CCIA") has pointed out that DISH's proposed network will "spur competition, increase innovation, and lead to lower prices and greater choice," and that further delay in approving DISH's applications "is unnecessary and would disserve the public interest."

Yet AT&T requests LightSquared-like buildout conditions on DISH's proposed 2 GHz ancillary terrestrial component ("ATC") network that would thwart DISH's efforts to bring these public interest benefits to consumers. AT&T also calls for unrelated and unwarranted conditions on DISH's 700 MHz authorizations. The Commission should reject both requests.

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¹ Letter from Joan Marsh, Vice President-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, Docket IB No. 11-149, at 2 (Jan. 26, 2012) ("AT&T Ex Parte").

² Computer & Communications Industry Association, Reply Comments, IB Docket Nos. 11-149, 11-150, at 11-12 (filed Nov. 3, 2011).

The overly aggressive and unrealistic schedule AT&T advocates would likely set DISH up for failure or force DISH into unfavorable business arrangements with large Commercial Mobile Radio Service ("CMRS") carriers. It would erect artificial barriers to DISH's plan to construct a new mobile broadband network on its own or consideration of partnerships with smaller companies, and could threaten DISH's ability to roll out a retail service. In short, an impracticably tight schedule would be a triple loss for consumers, the Commission, and DISH.

DISH's proposal to utilize the 2 GHz MSS band would, in CCIA's words, "create much needed competition in the highly concentrated wireless broadband market." The flexibility sought by DISH is the best course to achieving the Commission's objectives of tapping into new sources of broadband competition, investment, and innovation. The 2 GHz MSS band provides the Commission with the opportunity to promote mobile broadband competition in a meaningful way, and DISH provides a competitive entrant that is well-financed with a demonstrated track record of facilities-based competition on a national level. The Commission can and should grant DISH's applications immediately, without making them subject to unreasonable conditions.

I. LIGHTSQUARED-STYLE CONDITIONS WILL NOT RESULT IN A NEW, COMPETITIVE RETAIL MOBILE BROADBAND SERVICE

DISH has proposed to construct a nationwide wireless network, and has demonstrated a willingness to commit to a realistic buildout schedule that reflects the commercial availability of the LTE Advanced standard as well as a retail business model. The buildout conditions requested by AT&T do not adequately take account of these key drivers in DISH's plan. Such conditions would not bring about the earlier onset of new broadband competition; instead they will assure less competition, or none at all, leaving the CMRS competitive landscape essentially unchanged.⁴ A new, next-generation LTE Advanced retail network simply cannot be viably built in the S-Band at the pace AT&T suggests.

A. Tying Buildout to LTE Advanced Is the Only Route to Creating a Competitively Viable Fourth-Generation Mobile-Broadband Network

AT&T offers no justification for refusing to "key" DISH's network buildout "to the LTE Advanced standard." The inability to build to that standard at this time would, in fact, compel DISH to adopt a sub-optimal pre-LTE Advanced standard for its network. And building a "green field" network using any standard other than LTE Advanced is simply not a competitive option.

Building a network before LTE Advanced devices are widely available would necessitate the use of an earlier standard, followed by a migration to LTE Advanced once network and

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³ *Id.* at ii.

⁴ AT&T also suggests that DISH violated the ex parte rules by not going into greater detail about the discussion between DISH and FCC staff in a January 18, 2012 meeting. *See* AT&T Ex Parte at 3 n.7. DISH's ex parte letter constituted a proper "summary" of its oral presentation in compliance with Section 1.1206 of the Commission's Rules. 47 C.F.R. § 1.1206(b)(1); *see also* Amendment of the Commission's Ex Parte Rules and Other Procedural Rules, GC Docket No. 10-43, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-11 ¶ 35 (rel. Feb. 2, 2011).

⁵ See AT&T Ex Parte at 1.

consumer devices are available. As DISH noted in its Opposition, such a requirement would needlessly trigger backward compatibility and network modernization issues and costs for DISH's proposed network.⁶ An artificial buildout requirement would also waste precious resources that are better spent developing a next-generation network.

The most efficient approach, which DISH has already presented in its applications, is to enter the market for the first time with the most advanced technology, enabling DISH to "leapfrog[] the technologies currently in use." This critical issue of timing is properly recognized by AT&T, which notes that more LTE Advanced standardization and technology development is necessary before DISH can build an LTE Advanced network. The LTE Advanced standard is expected to be completed sometime this year. In fact, the International Telecommunication Union ("ITU") designated LTE Advanced as the standard for "next generation mobile technologies" only in the past month. Once the standard is complete, there will be a new development cycle for network infrastructure, chipsets, and devices, which will be a multi-year effort to reach widespread availability of a terrestrial S-Band ecosystem sometime in 2015.

AT&T, Verizon, and Sprint have themselves recently announced plans to move to LTE Advanced. There are good reasons for this fundamental shift. The differences between LTE Advanced and prior versions of LTE are so significant that the ability to provide LTE Advanced service and devices to one's customers will be critical to offering competitive mobile broadband services that can keep pace with American consumers' rapidly increasing demands for data. 11

⁶ Consolidated Opposition to Petitions to Deny and Response to Comments, IB Docket Nos. 11-149 and 11-150, at 37-39 (filed Oct. 27, 2011).

⁷ TerreStar Networks Inc., Debtor-in-Possession, TerreStar License Inc., Debtor-in-Possession, and DISH Network Corp. and Gamma Acquisition L.L.C., Consolidated Application for Transfer of Authorizations, Docket No. 11-150, at 3-4 (filed Aug. 22, 2011).

⁸ AT&T Ex Parte at 3.

⁹ See Int'l Telecomm. Union, Press Release, IMT-Advanced Standards Announced for Next Generation Mobile Technology (Jan. 18, 2012).

¹⁰ Phil Goldstein, *AT&T to Deploy LTE-Advanced in 2013*, FierceWireless, Nov. 8, 2011, http://www.fiercewireless.com/story/att-deploy-lte-advanced-2013/2011-11-08; Sue Marek, *Sprint Will Deploy LTE-Advanced in the First Half of 2013*, FierceWireless, Oct. 25, 2011, http://www.fiercewireless.com/story/sprint-will-deploy-lte-advanced-first-half-2013/2011-10-25; Brad Molen, *Shocker: Verizon Director Admits to LTE-Advanced Future*, Sept. 15, 2011, http://www.fiercewireless.com/story/sprint-will-deploy-lte-advanced-first-half-2013/2011-10-25.

¹¹ Geoff Duncan, *Is '5G' Mobile Broadband Just Around the Corner? IMT-Advanced Explained*, DigitalTrends, Jan. 19, 2012, http://www.digitaltrends.com/mobile/is-5g-mobile-broadband-just-around-the-corner-imt-advanced-explained/ (noting that, compared to LTE Advanced, "LTE, WiMax, and HSPA+ services that have been rolled out to consumers and marketed as '4G' don't measure up").

B. A Buildout Schedule Similar to LightSquared's Cannot Realistically Be Achieved by a New Retail Service Offering LTE Advanced in the 2 GHz Band

The differences between the wholesale and retail business models are more significant than AT&T claims and support DISH's proposed buildout schedule. AT&T acknowledges that the "retail versus wholesale" model difference is relevant when it says: "it is conceivable that a wholesale model may ease the challenges of producing consumer devices." AT&T qualifies this correct recognition, however, by describing it as irrelevant to the "pace or complexity of infrastructure deployment." The exception that AT&T properly recognizes is all-important: the development and integration of chipsets and consumer devices is an integral part of, and an essential prerequisite to, network buildout, which can proceed only when a critical mass of devices are available to make commercial use of the network.

Furthermore, building a retail service from the ground up takes time and careful planning. Among other things, putting a new service together will require DISH to lease tower space across the nation, develop devices in conjunction with consumer electronics manufacturers, devise competitive rate plans, extend its brand identity, expand its national retail presence, upgrade its nationwide customer support/billing system, and maintain a competitive position in device and service offerings as customer expectations and demands evolve. At every step, a new retail service will face competitive pressure from incumbents with more experience and possibly a stranglehold on tower sites and other resources. To respond to these challenges, a new entrant must devote care and effort to the design and implementation of the service—from the retail footprint chosen down to the network infrastructure and devices used. On top of it all, a new retailer's ability to partner with incumbents is more limited than that of a wholesaler, considering that incumbents will (rightly) view the new retailer as a competitor. Ultimately, the retailer/wholesaler distinction further supports a different buildout approach for DISH than previously developed for LightSquared.

Additionally, any comparison with LightSquared's buildout commitment must also take into account LightSquared's business plan—a network sharing strategy. That model is capable of putting spectrum to use relatively quickly, but only because the new entrant can "piggy-back" off an incumbent's network. This is effectively what seems to have happened with LightSquared. LightSquared has contracted with Sprint to take care of many nuts-and-bolts issues—using Sprint's existing infrastructure to ease the significant burden of its buildout conditions. LightSquared-like buildout requirements would drive any new provider towards such a network sharing approach.

¹² AT&T Ex Parte at 2.

¹³ *Id*.

¹⁴ *Id*.

¹⁵ See Press Release, Sprint Nextel and LightSquared, Sprint Nextel and LightSquared Announce Spectrum Hosting and Network Services Agreement (rel. July 28, 2011), available at http://newsroom.sprint.com/article_display.cfm?article_id=1989 ("This agreement is expected to lower network capital and operating expenses for LightSquared by more than \$13 billion over the next eight

AT&T is also wrong to discount the challenges of DISH's integration task by noting that LightSquared faced hurdles interleaving its spectrum with that used by Inmarsat. But LightSquared and Inmarsat had already reached an agreement putting the bulk of the interleaving problem behind them by the time the clock started ticking on LightSquared's buildout schedule. Moreover, LightSquared did not need then, and does not need now, to integrate two satellite networks with its terrestrial system, in contrast with the challenges confronting DISH.

II. AT&T RAISES INTERFERENCE CONCERNS REGARDING DISH'S 700 MHZ E BLOCK LICENSES THAT ARE IRRELEVANT TO THIS PROCEEDING

The request for an interference-protection condition relating to DISH's potential use of the 700 MHz E-Block licenses held by its affiliate, Manifest Wireless LLC ("Manifest"), is extraneous to the current proceedings. A grant of DISH's applications concerning 2 GHz spectrum would have no effect on any issues relating to a separate block of 700 MHz spectrum. AT&T specifically relies on the Applicants' statement that these 700 MHz licenses may be used to "enhance the effectiveness and competitiveness of any mobile broadband services." But that mere future *possibility* does not make this an appropriate venue for imposing conditions on a band completely outside the current proceeding. The Commission has made clear, as AT&T itself has recognized, that "merger review is limited to consideration of merger-specific effects" and that the Commission "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction." ¹⁹

DISH has not even committed to using its 700 MHz spectrum for mobile broadband. While it did raise the possibility in its applications, DISH has continued to explore the use of that spectrum for other uses. In its January 13, 2012 report to the Wireless Bureau, Manifest explained that it was primarily focused on using that spectrum for various mobile-video applications. The "hook" relied upon by AT&T is therefore simply unavailing, because a waiver grant will not affect the 700 MHz band.

years in comparison with the cost of a stand-alone network build. LightSquared expects the deployment of the nationwide 4G-LTE network to be completed more than one year ahead of the Federal Communications Commission (FCC) mandate to cover 260 million Americans by 2015.").

¹⁶ AT&T Ex Parte at 2.

¹⁷ LightSquared's predecessor, SkyTerra, signed the L-band Cooperation Agreement with Inmarsat in December 2007.

¹⁸ AT&T Ex Parte at 3.

¹⁹ Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments, WT Docket No. 11-65, at 209 (filed June 10, 2011) (quoting Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, *Order*, 17 FCC Rcd. 22633, 22637 ¶ 11 (2002); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd. 17444, 17463 ¶ 29 (2008)).

²⁰ See Manifest Wireless, 700 MHz Performance Status Report (Jan. 13, 2012).

III. CONCLUSION

The unrealistic buildout conditions requested by AT&T would result in a hamstrung new entrant that could either fail under overly aggressive buildout conditions or sacrifice the option of creating a new, national, and independent competitor to large incumbent operators. The Commission should instead condition its grant of the requested waivers on attainable buildout milestones that leave DISH with sufficient time to create a competitive network.

Respectfully submitted,

/s/ Jeffrey H. Blum
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